



UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

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OFFICE OF GENERAL COUNSEL

June 22, 1981

In Reply  
Refer To: B-198352

The Honorable Thomas S. Martin  
Acting Assistant Attorney General  
Civil Division  
U.S. Department of Justice

Dear Mr. Martin:

We are presenting for your consideration the claim of the heirs of Mr. Vernon Alvin Reibach, which was referred to us for settlement by the Bureau of Indian Affairs, Department of the Interior. The details of this claim are discussed in our decision of today, B-198352, copy enclosed, in which we held that the Department of the Interior could not pay this claim from funds appropriated to it for other purposes. However, since their attorneys have threatened to litigate this matter, you may wish to consider this claim under the provisions of 28 U.S.C. § 2414 and to enter into a compromise settlement with the claimants, Mr. Reibach's heirs.

Briefly, the Indian Claims Commission awarded the Northern Paiute Nation three separate judgments as compensation for land taken from them. The Congress appropriated sufficient monies to pay these judgments. Pursuant to a plan authorized by statute, the Secretary of the Interior prepared and approved a Northern Paiute descendant roll and distributed the entire appropriated amount (less certain litigation expenses) to the persons, or their heirs, on the roll. It was later determined that Mr. Reibach was erroneously excluded from the roll and that he was entitled to his proportionate share of the award. Since the sum appropriated had already been distributed, we were asked to rule on whether Interior's appropriations could be used to pay Mr. Reibach's share. In our decision we note that the award was for a set amount in which all members of the Nation were to share equally and that Congress appropriated that amount to pay it. Our view is that this appropriation is the exclusive one available to pay this award and that since it is now exhausted, Interior is without funds available to pay this claim.

We note, however, that Mr. Reibach's heirs have retained counsel and have threatened to bring suit if an administrative settlement in their favor is not reached. Since Mr. Reibach was entitled to share in the award and since Interior's erroneous exclusion of him from the rolls until after it distributed the full amount of the award was the cause of the

[Claim for Share of Settlement Funds]

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B-198352

current situation, we believe that litigation on behalf of his heirs could well be successful. Since Interior may not settle this claim as it has no appropriations available for that purpose, we are referring the matter to you for your consideration under 28 U.S.C. § 2414.

We are enclosing copies of all documents in our files for your information. More information may be obtained from the Department of the Interior. If we may be of assistance, please feel free to contact Ms. Jennifer Westfall or Mr. Howard Levy (both on 275-5544) of my staff.

Sincerely yours,

*Harry R. Van Cleve*

Harry R. Van Cleve  
Acting General Counsel

Enclosures